P.R. No. 595/06
Presented by Shri Shivraj Singh
dated 04/12/06

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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR [C.G.]

SECOND APPEAL NO. 97 /2006

APPELLANTS DEFENDANT :- Ramchandra son of Dukhu Ganda, aged about 45 years, Agriculturist, R/o Padkipati, Tah Sarangarh, District Raigarh [C.G.].

VERSUS

RESPONDENTS PLAINTIFFS :- 1] Thandaram S/o Dukhuganda, aged 42 years, Agriculturist, R/o village Padkipati, Tahsil Sarangarh, District Raigarh [C.G.].

2] State of Chhattisgarh, Through- The Collector, Raigarh [C.G.].

SECOND APPEAL UNDER SECTION100 OF CIVIL PROCEDURE CODE 1908

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...S.A.- 97/06... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

26.07.2006

Shri Rajneesh Singh Baghel, Counsel for the appellant.

Arguments on admission heard.

Order passed as follows :

ORAL ORDER

26.07.2006

This is the defendant's Second Appeal filed under Section 100 of the Code of Civil Procedure. It has been directed against the impugned judgment and decree dated 10/01/2006 passed in Civil Appeal No.8-A/2005 by the Second Additional District Judge, Raigarh (C.G.). The learned Additional District Judge allowed the said appeal and decreed the suit of the plaintiff, which was dismissed by the Trial Court. The said appeal was filed against the judgment and decree dated 28/2/2005 passed in Civil Suit No.18-A/2003 by the Civil Judge Class-II, Sarangarh District Raigarh.

The brief facts are that the plaintiff and the defendant are the real brothers. The suit lands were the self-acquired properties of one Dano @ Sonadhar, who was the elder uncle (*Tau*) of plaintiff and defendant. Dano died issueless. His wife also died and there was no one in his branch to succeed his properties. The plaintiff filed a suit for declaration that the suit lands of Schedule-A of the plaint should be declared as the lands

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मामला क्रमांक ...SA...92/...16 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of joint ownership and possession in between the two brothers having ½ share each. In alternative, he also claimed that if the plaintiff is not found in joint possession, the lands be partitioned and he should be given separate possession of the same. Against the said claim made by the plaintiff, the defendant pleaded that he was the adopted son of Late Dano @ Sonadhar, who had adopted him in the year 1977 through an adoption deed dated 6th of December 1977. This adoption deed, filed as D-7, was not a registered document.

The Trial Court recorded the finding that the adoption was not proved by the defendant. However, it held that the plaintiff and defendant are the real brothers. Even after holding this, the Trial Court dismissed the suit of the plaintiff. Against the aforesaid judgment and decree passed by the Trial Court, the plaintiff filed an appeal before the Lower Appellate Court.

The Lower Appellate Court allowed his appeal and decreed the suit holding that since these two brothers were the successors of Late Dano @ Sonadhar, they will succeed his properties to the extent of ½ share each in the same. It also ordered for partition of the suit properties in the above manner and also for delivery of possession of the properties allotted to the share of the plaintiff. It was further held that the defendant could not establish that he was the adopted son of Dano @ Sonadhar.

[redacted]

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(68)

मामला क्रमांक ....SA...97.../...01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is against this judgment and decree passed by the Lower Appellate Court, the defendant has preferred this Second Appeal under Section 100 of the Code of Civil Procedure.

It as been held in the matter of ***Madhusudan Das v. Smt. Narayani Bai and others reported in A.I.R. 1983 S.C. 114*** that for a valid adoption, the physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions, whatever the caste. And this requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exists an expression of consent or an executed deed of adoption. In some cases, to complete the adoption a "datta homam" has been considered necessary, but in the case of the twice-born classes no such ceremony is needed if the adopted boy belongs to the same *gotra* as the adoptive father.

Here the question in relation to *gotra* etc is not in dispute. The dispute is regarding proof of factum of adoption. The Trial Court as well as the First Appellate Court have concurrently held that the defendant could not prove that he was the adopted son of Dano @ Sonadhar and for this reason, in the line of natural succession, plaintiff and defendant, who are the real brothers, have been held to be joint successors of the properties of their elder uncle.

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मामला क्रमांक ..S.A.-.97./.2.. सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	There appears to be no perversity in the concurrent findings recorded by the two Courts below in this regard. No substantial question of law is involved in this appeal. There is no merit in this appeal and the same is dismissed at the motion stage itself. In the result all the interim applications stand disposed of. **Sd/-** **Sunil Kumar Sinha** **Judge**	

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